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SERVICE DATE - JULY 8, 1997

SURFACE TRANSPORTATION BOARD

DECISION

Ex Parte No. MC-216

JURISDICTION OVER MOTOR FINANCE TRANSACTIONS

AGENCY: Surface Transportation Board

ACTION: Proposed rule, withdrawal.

SUMMARY: The Surface Transportation Board is discontinuing the rulemaking in Ex Parte No. MC-216.

DATES: This decision is effective on July 8, 1997.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 565-1600]. [TDD for the hearing impaired: (202) 565-1695.]

SUPPLEMENTARY INFORMATION: The ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803 (1995) (ICCTA), which took effect on January 1, 1996, abolished the Interstate Commerce Commission (ICC) and transferred certain of its motor carrier regulatory functions to the Secretary of Transportation (Secretary) and to the Surface Transportation Board (Board). *See* ICCTA section 101 (abolition of the ICC). *See also* new 49 U.S.C. 13101-14914 (regulatory provisions applicable to motor carriers, administered in part by the Secretary and in part by the Board).

Prior to January 1, 1996, former 49 U.S.C. 11343 provided that certain motor carrier transactions, including those related to mergers, purchases, and acquisitions of control, could not be carried out without prior ICC approval. Under former 49 U.S.C. 11343(d)(1), however, ICC approval was not required if the only parties were motor carriers and their "aggregate gross operating revenues" did not exceed \$2 million during a consecutive 12-month period ending not more than 6 months before the date of the agreement underlying the transaction.

Sale, lease, and merger transactions involving only motor carriers whose aggregate gross operating revenues did not exceed the \$2 million threshold were subject to prior ICC approval under former 49 U.S.C. 10926 and the small carrier transfer rules of 49 CFR part 1181. Control transactions involving only motor carriers whose aggregate gross operating revenues did not exceed the \$2 million threshold were not subject to ICC jurisdiction.

In the notice of proposed rulemaking (NPR) in this proceeding, served December 15, 1993, and published December 16, 1993 (58 FR 65695), the ICC proposed to redefine aggregate gross operating revenues for purposes of calculating the \$2 million threshold. The notice of proposed rulemaking included both a revised 49 CFR part 1188 and conforming amendments to 49 CFR parts 1181, 1182, and 1186.

Under new 49 U.S.C. 14303(g), the only remaining jurisdiction analogous to the non-rail portions of former section 49 U.S.C. 11343, motor carriers of passengers must still obtain Board approval for the same transactions that formerly were subject to old 49 U.S.C. 11343, unless the parties' aggregate gross operating revenues do not exceed the same \$2 million jurisdictional threshold of old 49 U.S.C. 11343(d)(1). Other regulatory approval, as was required under former 49 U.S.C. 10926, is no longer required when the parties' aggregate gross operating revenues do not exceed the \$2 million threshold. Consequently, in *Revision to Regulations Governing Finance Applications Involving Motor Passenger Carriers*, STB Ex Parte No. 559 (published elsewhere in this section of the *Federal Register*), we are issuing a new NPR proposing revised procedures for finance applications involving motor carriers of passengers. Because we will consider the jurisdictional threshold computation issue in STB Ex Parte No. 559, we are

discontinuing this proceeding. The comments previously filed in this proceeding will be made part of the record in STB Ex Parte No. 559 and need not be refiled.

ENVIRONMENTAL AND ENERGY CONSIDERATIONS

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

REGULATORY FLEXIBILITY ANALYSIS

This action will not have a significant economic impact on a substantial number of small entities. It imposes no new requirements on any entity, and previous requirements involving carriers other than motor passenger carriers have been repealed by statute.

Decided: June 20, 1997.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams
Secretary